



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,729	11/24/2003	Gerard A. Rutigliano	893.0011USU	2758

7590 12/02/2005

Charles N.J. Ruggiero, Esq.  
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.  
10th Floor  
One Landmark Square  
Stamford, CT 06901-2682

EXAMINER
----------

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
----------	--------------

1723

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/720,729	<b>Applicant(s)</b> RUTIGLIANO ET AL.	
	<b>Examiner</b> Charles E. Cooley	<b>Art Unit</b> 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **FINAL OFFICE ACTION**

### ***Claim Rejections - 35 USC § 102***

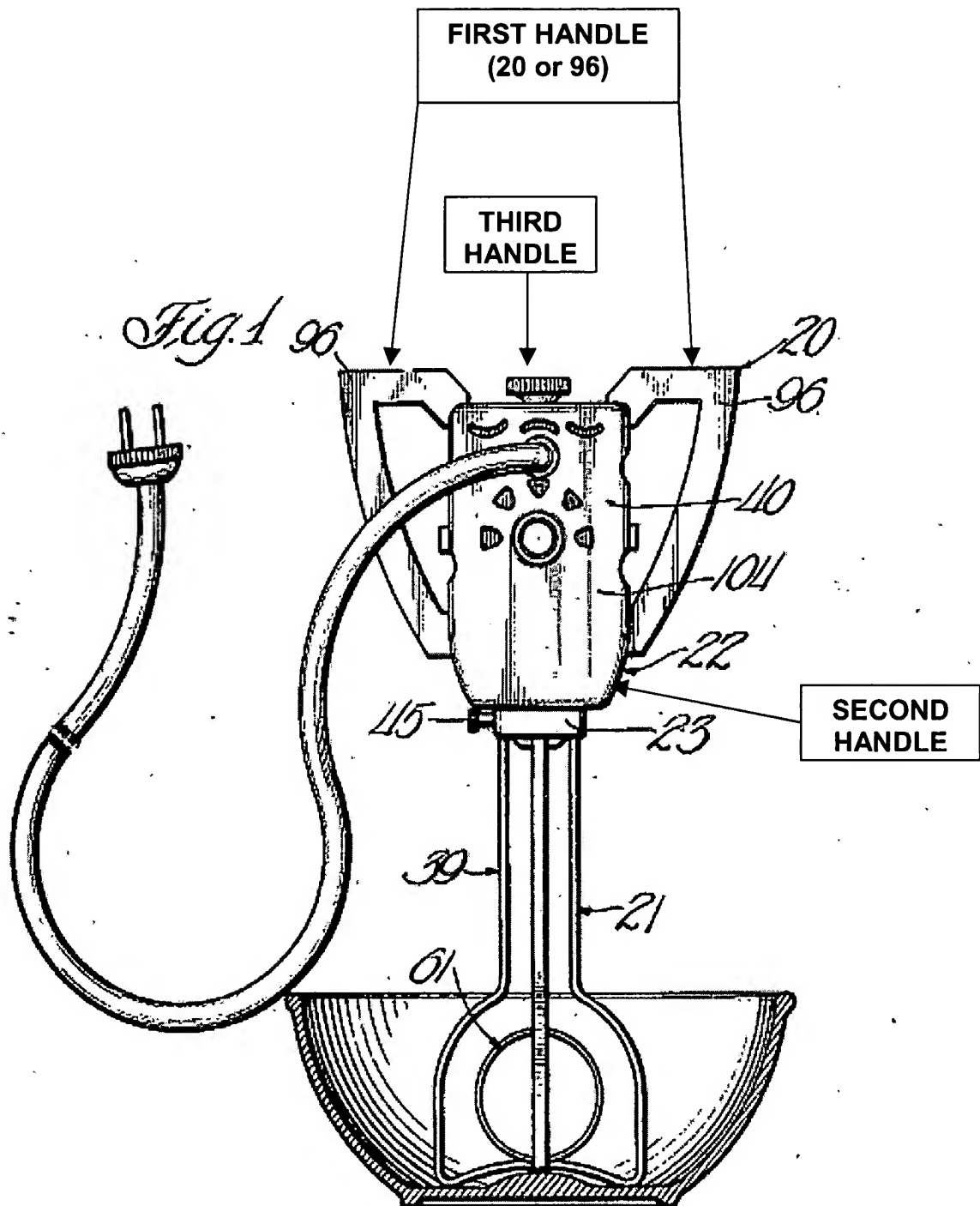
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-4, 6-15, and 17-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Dormeyer (US 1,928,965).**

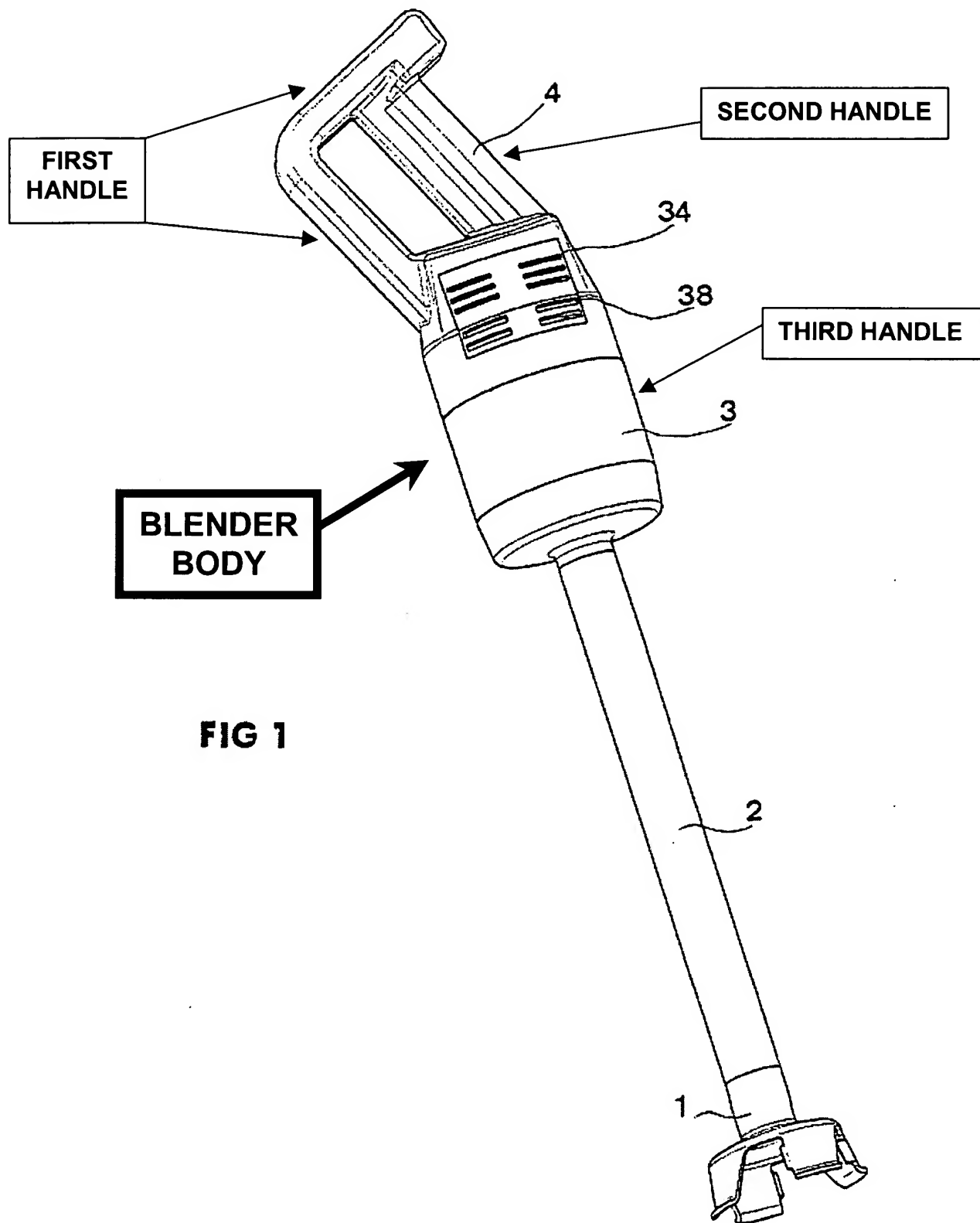
The patent to Dormeyer clearly discloses a blender as seen below comprising a body 22 for containing a drive motor 86, the body 22 having a shaped outer surface, a first handle 20 or 96 and a second handle 40, wherein said first handle 20 or 96 is ergonomically shaped, said second handle 40 is formed from a shape of said body 22, and said first handle 20 or 96 is operatively connected to said second handle 20 or 96, a drive shaft 34 or 35 operatively connected to said drive motor, and a tool 21 operatively connected to said drive shaft; a third handle 214; wherein said first handle 20 or 96 is elongated with a proximal end portion, a central portion and a distal end portion; wherein said proximal end and said distal end enable an operator's hand to easily grasp or wrap thereabout; wherein said second handle 20 or 96 can be handled by the operator to stabilize the immersion blender during operation; wherein said third handle is a knob 214; the handles 20 or 96 are disposed on a side of said body 22; the handles being capable of being disposed at any orientation with respect to a working surface; the third handle is disposed on a top side of the body 22.



Art Unit: 1723

**3. Claims 1-6, 8-9, 11-17, and 19-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Calange (US 6,193,404 B1).**

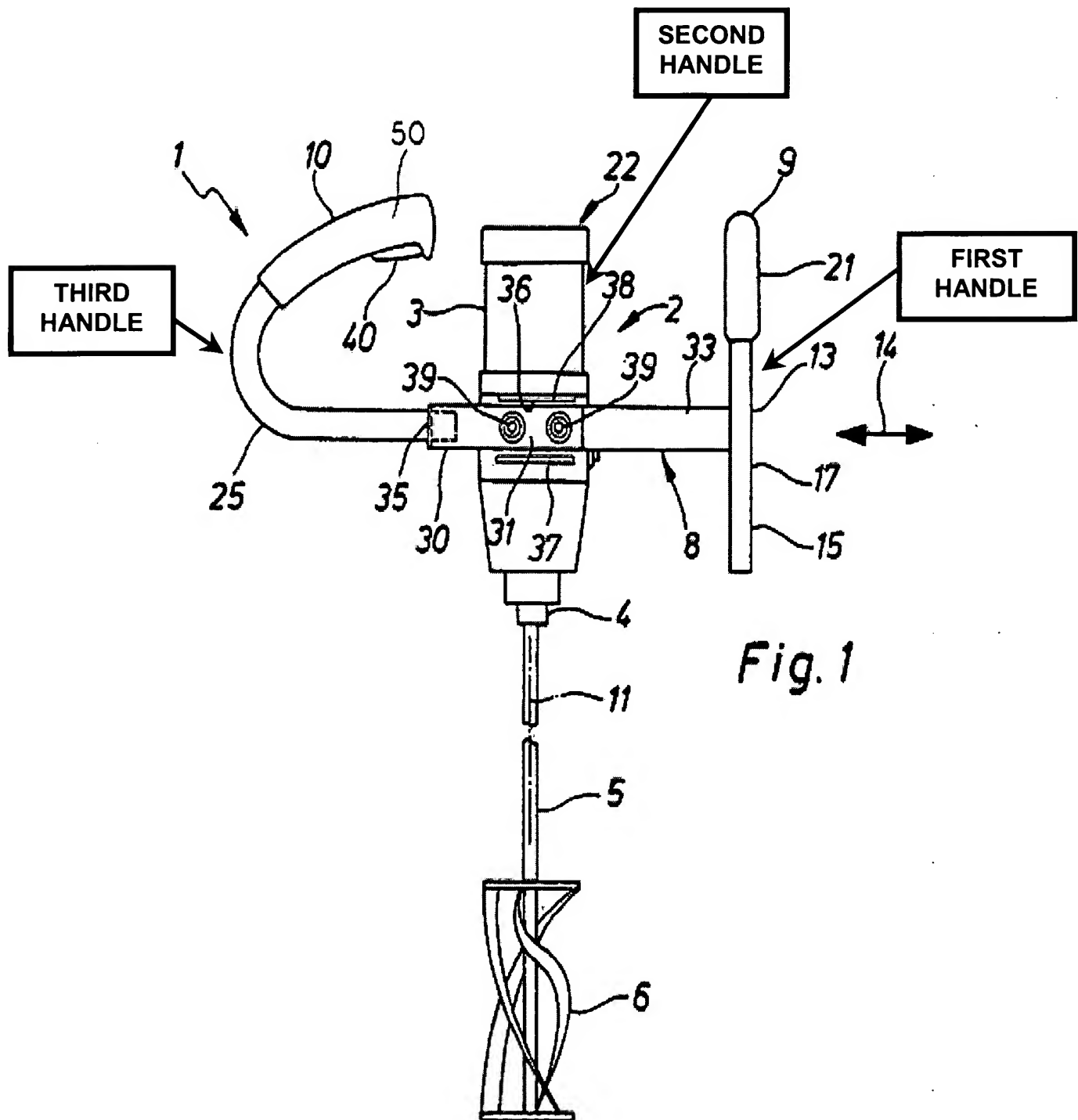
The patent to Calange clearly discloses a blender as seen below comprising a body (the housing seen in Fig. 1) for containing a drive motor 32, the body 3 having a shaped outer surface, a first handle (see below) and a second handle 4, wherein said first handle is ergonomically shaped, said second handle 4 is formed from a shape of said body (col. 2, lines 46-48), and said first handle is operatively connected to said second handle 4, a drive shaft 5 operatively connected to said drive motor 32, and a tool 13 operatively connected to said drive shaft; a third handle (the outer surface of 3); wherein said first handle is elongated with a proximal end portion, a central portion and a distal end portion; wherein said proximal end and said distal end enable an operator's hand to easily grasp or wrap thereabout; a central portion of the top section of the first handle is connected to the second handle 4 (Fig. 1); wherein said second handle 4 can be handled by the operator to stabilize the immersion blender during operation; the first handle having a section disposed on a side of said body 3; the handles being capable of being disposed at any orientation with respect to a working surface; the third handle 3 is disposed on a side of the body (Fig. 1).



Art Unit: 1723

**4. Claims 1-6, 8-9, 11-17, and 19-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hlavka et al. (US 6,273,601 B1).**

The patent to Hlavka et al. clearly discloses a blender as seen below comprising a body 2 for containing a drive motor (col. 2, lines 26-30), the body 2 having a shaped outer surface, a first handle 8 and a second handle 2, wherein said first handle is ergonomically shaped, said second handle 2 is formed from a shape of said body, and said first handle 8 is operatively connected to said second handle 2, a drive shaft 5 operatively connected to said drive motor, and a tool 6 operatively connected to said drive shaft; a third handle 1; wherein said first handle 8 is elongated with a proximal end portion, a central portion and a distal end portion; wherein said proximal end and said distal end enable an operator's hand to easily grasp or wrap thereabout; a central portion of the first handle 8 is connected to the second handle 2 (Fig. 1); wherein said second handle 2 can be handled by the operator to stabilize the immersion blender during operation; the first handle 8 having a section disposed on a side of said body 22; the handles being capable of being disposed at any orientation with respect to a working surface; the third handle 1 is disposed on a side of the body (Fig. 1).

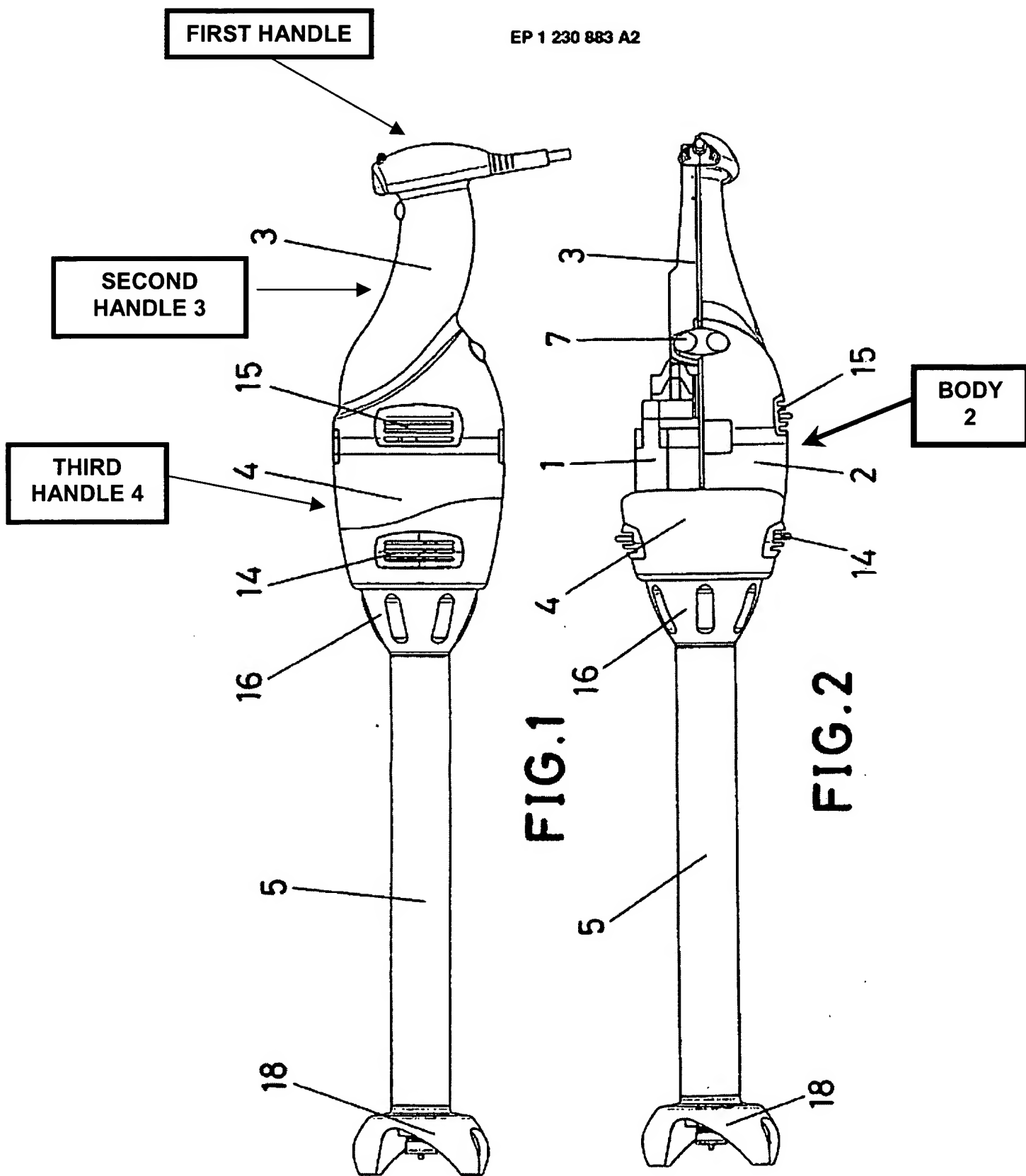




**5. Claims 1-6, 8-9, and 11-12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by EP 1230883 A2.**

EP 1230883 A2 clearly discloses a blender as seen below comprising a body 2 for containing a drive motor (para. [0042]), the body 2 having a shaped outer surface, a first handle (see below) and a second handle 3 wherein said first handle is ergonomically shaped (para. [0039]), said second handle 3 is formed from a shape of said body, and said first handle is operatively connected to said second handle 3, a drive shaft 20 operatively connected to said drive motor, and a tool 11 operatively connected to said drive shaft; a third handle 4; wherein said first handle is elongated with a proximal end portion, a central portion and a distal end portion; wherein said proximal end and said distal end enable an operator's hand to easily grasp or wrap thereabout; a central portion of the first handle is connected to the second handle 3 (Fig. 1); wherein said second handle 3 can be handled by the operator to stabilize the immersion blender during operation; the handles being capable of being disposed at any orientation with respect to a working surface; the third handle 4 is disposed on a side of the body 2 (Fig. 1).

EP 1 230 883 A2



***Response to Amendment***

6. Applicant's arguments filed 19 SEP 2005 have been fully considered but they are not deemed to be persuasive.

Applicant is reminded that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Turning to the rejection of the claims under 35 U.S.C. § 102(b), it is noted that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*Sjolund v. Musland*, 847 F.2d 1573, 1581-82, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988)). Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1064 (Fed. Cir.), cert. denied, 488 U.S. 892 (1988); *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ

Art Unit: 1723

385, 388 (Fed. Cir. 1984). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of properties that are inherently possessed by the prior art reference. *Verdegaal Brothers Inc. v. Union Oil co. of California*, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987), cert. denied, 484 U.S. 827 (1987). A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (*In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what Applicant is claiming, but only that the claims "read on" something disclosed in the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984) (and overruled in part on another issue), *SRI Intel v. Matsushita Elec. Corp. Of Am.*, 775 F.2d 1107, 1118, 227 USPQ 577, 583 (Fed. Cir. 1985). Also, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

With respect to the applied prior art under 35 U.S.C. § 102(b), the examiner has explicitly demonstrated how the references disclose each and every element set forth in

Art Unit: 1723

the broad claims and how the pending claims read on the disclosure of the references, hence the rejections are still considered proper.

The examiner believes any part of a blending device that can be grasped by a user (such as elements denoted as handles, any projections from the motor housing, or an outer surface of the motor housing itself, etc.) can be considered a "handle" within the broad scope of the pending claims. Simply because an element has another function (such as the knob 214 of Dormeyer), there is no evidence that such an element could not be used or is wholly incapable of being implemented as a handle by an operator. With this not unreasonable approach, at least four handles can be identified on the device of Dormeyer, at least four handles can be identified on the device of Calange, and a multitude of handles can be identified on the device of Hlavka et al. Accordingly, with further regard to Calange, the multiple elements on the top of housing 3 can be considered discrete handles as pictured above, contrary to Applicant's assertion. Hlavka et al. clearly shows multiple handles as pictured above.

To the extent the amendatory language "formed from a shape of said body" (amended claims 1 and 8) can be deemed a product by process limitation, such subject matter is not germane to the patentability of the product itself (see MPEP 2113). Nevertheless, the external surface of the blender body or motor housing of the devices of the prior art blenders are most capable of being grasped by a user and thus can be deemed a handle "formed from a shape of said body" as is now claimed.

With regard to the intended use language of the claims and the manner in which the blender is manipulated by a user (e.g., see claim 6 and 13), such intended uses

Art Unit: 1723

have not been afforded any patentable weight because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647; *In re Sebald*, 122 USPQ 527; *In re Lemin et al.*, 140 USPQ 273; *In re Sinex*, 135 USPQ 302; *In re Pearson*, 181 USPQ 641.

Exemplary claim language such as "wherein said second handle can be handled by the operator to stabilize the immersion blender during operation" (claim 6) and "wherein said body has a first handle to facilitate pivoting the blender with respect to a working surface, a second handle to facilitate moving the blender laterally with respect to said working surface, and a third handle to facilitate stabilizing the blender during operative use" are merely statements of intended use which imparts no structure to the claimed apparatus. It is well settled that the intended use of an apparatus is not germane to its patentability. *In re Self*, 671 F.2d 1344, 213 USPQ 1 (CCPA 1982); *In re Yanush*, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967). Furthermore, there is no reason to believe that the multiple handles of the prior art blenders are wholly incapable of being manipulated in the claimed manners.

In conclusion, the amendments made in the instant application are not deemed of a substantive nature to define over the prior art and thus the rejections are considered proper.

***Conclusion***

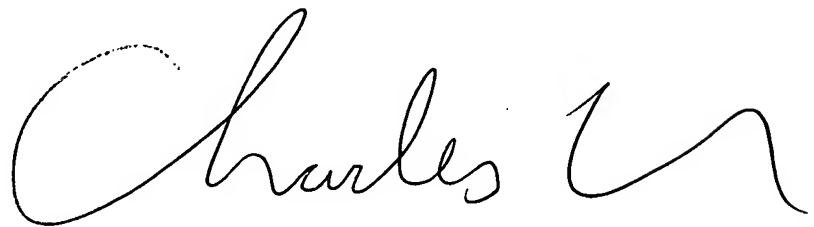
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION. ANY RESPONSE FILED AFTER THE MAILING DATE OF THIS FINAL REJECTION WILL BE SUBJECT TO THE PROVISIONS OF MPEP 714.12 AND 714.13.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

Art Unit: 1723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Charles E. Cooley", followed by a stylized flourish.

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

29 November 2005